

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Application of)

HYPERCUBE, LLC)

and)

KMC DATA LLC)

For Grant of Authority Pursuant to Section 214 of)
the Communications Act of 1934 and Sections)
63.04, 16.18 and 63.24 of the Commission's Rules)
to Complete a Transfer of Control of Authorized)
International and Domestic Interstate Carrier)

) WC Docket No. 06-20

REPLY COMMENTS

Hypercube, LLC ("Hypercube") and KMC Data LLC ("KMC Data") (Hypercube and KMC Data together, "Applicants"), by their undersigned counsel, file these Reply Comments in response to the Comments of AT&T Inc. ("AT&T") filed on February 14, 2006. As described more fully below, this Application, which seeks authorization for the transfer of control of KMC Data, is not the appropriate proceeding for AT&T to address its concerns regarding the prior practices of affiliates of KMC Data. Indeed, although AT&T purports to be concerned about adherence to the processes and procedures established for the transition of services, AT&T carefully avoids any claim that the transition of services that are relevant to the Application have given rise to any of the issues that it claims have been raised by the discontinuance of other services or other transactions by KMC Data's affiliates. This is because it is AT&T, and not KMC Data, that is guilty of such failure to comply with procedures and processes, and who has impeded the submission of the required service requests by KMC Data by refusing to accept the

submission of KMC Data's CLEC Profile – an necessary predicate to submission of the ASRs and LSR's described in AT&T's Comments.

KMC Data has for months attempted to follow standard industry procedures with respect to the transition of certain services to KMC Data's ACNA and OCNs. This process is critical to the completion of the transaction that is the subject of the Application, and KMC Data has and will continue, to the extent that AT&T ceases to obstruct it, to follow the standard industry processes to complete all of the steps required to complete the transaction described in the Application. AT&T's tactics, on the other hand, seriously jeopardize the continuation of uninterrupted service to KMC Data customers. For these reasons, the Commission should immediately deny AT&T's request that approval of the transaction be conditioned upon an "express undertaking [by KMC Telecom Holdings, Inc. ("KMC Holdings")], on behalf of itself and its affiliates, to comply with all industry standards, practice and guidelines on LNP and number administration in its business transaction related to reorganization of its business," including previously authorized transactions.¹

Discussion

In an attempt to resolve disputes unrelated to the transaction, AT&T is trying to hold this proceeding hostage. The issues that AT&T raises in its Comments relate to (1) transactions by former affiliates of KMC Data that were completed over six months ago and (2) the discontinuance by other affiliates, KMC Telecom V Inc. and KMC Telecom of Virginia Inc. (together, "KMC V"), that was completed over one month ago. AT&T does not allege that KMC Data has not followed industry standards with respect to the proposed transaction; in fact, as described below, KMC Data has attempted to follow AT&T's procedures in order to

¹ AT&T Comments at 7.

transaction its circuits to its ACNA. The prior actions of these affiliates of KMC Data have no bearing on the proposed transaction, which is simply a transfer of control that will not involve the transfer of assets from KMC Data or the discontinuance of service. In fact, the proposed transaction will prevent the discontinuance of service by KMC Data.

If AT&T was concerned about the actions of the affiliates of KMC Holdings related to previous transaction, AT&T should have addressed the issues in comments to those transactions.² Following completion of the proposed transaction, KMC Data will not be affiliated with KMC Holdings, and KMC Holdings will have no affiliates providing telecommunications services. The conditions requested by AT&T, therefore, will be moot.

Nevertheless, KMC Data is committed to following industry standards in order to transition circuits onto its ACNA.³ As noted above, KMC Data attempted to start this process with AT&T (then known as SBC) in October 2005 by submitting its CLEC Profile as required by AT&T. AT&T, however, has repeatedly refused to accept the completed CLEC profile and to provide a password so that KMC Data can submit service requests and changes. In addition, AT&T has been consistently unresponsive to KMC Data's inquiries regarding the status of the CLEC profile. When AT&T has responded after repeated contacts from KMC Data, AT&T often requests from KMC Data additional information and documentation that are not typically required. KMC Data has tried to comply with AT&T's seemingly *ad hoc* procedures but AT&T has been holding up the transition on technicalities of its own creation. Applicants question the

² See Section 63.71 Application of KMC Telecom V Inc. and KMC Telecom of Inn. And KMC Telecom of Virginia Inc. for Authority to Discontinue Domestic Telecommunications, WC Docket No. 05-309/Comp. Pol. File No. 729, Order, DA 05-334 (Rel. Dec. 28, 2005).

³ "Industry standards" do not allow affiliates to order circuits under separate ACNA and, therefore, all of KMC Data's circuits are currently under KMC V's ACNA. Since KMC Data will no longer be affiliated with KMC V following the transaction, KMC Data is attempting to have its circuits associated with that ACNA.

true motive behind AT&T's Comments when AT&T has not been receptive to KMC Data's attempt to follow AT&T procedures relative to the transaction that is the subject of this Application.

Since the concerns raised by AT&T do not apply to this transaction and KMC Data is already complying (or at least attempting to comply) with "industry standards" as they apply to the proposed transaction, Applicants respectfully request that the Commission approve the Application under its streamlined procedures and without any conditions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brett P. Ferencak". The signature is fluid and cursive, with the first name "Brett" being more prominent.

Jean L. Kiddoo
Brett P. Ferencak
Swidler Berlin LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7647
Email: JLKiddoo@swidlaw.com
BPFerencak@swidlaw.com

Counsel to Applicants

Dated: February 21, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, copies of the foregoing "Reply Comments" were served electronically on the parties listed below:

Marlene H. Dortch*
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Suite TW-A325
Washington, DC 20554

Best Copy & Printing, Inc.**
Portals II – Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com

Peter H. Jacoby**
Senior Counsel
AT&T Services, Inc.
peter.jacoby.1@att.com

Tracey Wilson-Parker**
Federal Communications Commission
Competition Policy Division
Wireline Competition Bureau
tracey.wilson-parker@fcc.gov

Denise Coca**
Federal Communications Commission
Competition Policy Division
Wireline Competition Bureau
denise.coca@fcc.gov

Susan O'Connell**
Federal Communications Commission
Policy Division, International Bureau
susan.oconnell@fcc.gov

James Bird**
Federal Communications Commission
Office of General Counsel
james.bird@fcc.gov

Regina Brown**
Attorney-Advisor
Federal Communications Commission
Wireline Competition Bureau
regina.brown@fcc.gov

Narda Jones**
Chief
Telecommunications Access Policy Division
Federal Communications Commission
Wireline Competition Bureau
narda.jones@fcc.gov

Cheryl Callahan**
Assistant Chief
Telecommunications Access Policy Division
Federal Communications Commission
Wireline Competition Bureau
cheryl.callahan@fcc.gov



Brett P. Ferencak

*via ECFS

** via electronic mail